



# Missoula Police Department

435 Ryman Street, Missoula, MT 59802-4297

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3/17/09

CALL NO. HB228

From the Desk of Mark Muir

Phone: (406)-552-6316 Fax: (406) 728-6690

[mmuir@ci.missoula.mt.us](mailto:mmuir@ci.missoula.mt.us)

March 17, 2009

Senate Judiciary Committee

Re: HB 228

Chairman Perry and Committee Members,

I write you today as an eighteen year veteran of law enforcement and Chief of the second largest city police department in Montana. I urge you to vote DO NOT PASS on House Bill 228 before it leaves this committee. Sadly, this bill has returned to your committee in an insignificantly modified version from what was voted down in the 2007 session. The proponents brought it back without even taking time to consider the amendments or other progress that had been made last session. Law enforcement is not here to take anything away from gun owners, we think we are on the same side of supporting gun ownership by law-abiding citizens.

Law enforcement has endorsed alternatives bills in this session to support the principles of self defense. Police are not here asking you to prevent people using appropriate force to defend themselves or others and recognize the desire to have a Castle Doctrine type in Montana. HB 228 is poor legislation that attempts to inject change with a shotgun approach. Many of the sections of this bill already clearly exist in statute today; take for instance Section 1 (4) which declares "the lawful use of firearms for self-defense is not a crime or an offense against the state." This principle is already founded in statutes where MCA Title 45 has an entire Chapter on justifiable use of force. Other states who've passed Castle Doctrine bills still require citizens to have concealed weapons permits to carry a concealed weapon. It's a simple process and law abiding citizens can carry with safety and comfort in the law.

I train police officers in the use of force and have listened to cops from across the state and not one can give me a legal definition of defensive display of a firearm. Section 3 of HB 228 is based on this vague principle and increases the likelihood of armed conflicts between citizens and higher incident of police encountering weapons at a scene. It does this by removing the legal consequence of bringing a firearm into a situation that doesn't deserve that show of force. As example, imagine being involved in a traffic collision where you're not the party at fault. You get out of your car and upset by the crash confront the other driver. How are you going to feel when that person pulls a handgun or rifle from their car and reminds you that they have the right to defend themselves? All legal under HB228, regardless of how harmless your intent to confront the other driver.

Or maybe your daughter is the night pharmacist at the local 24 hour Walgreen. The police are actively seeking a man who has displayed a weapon in his waistband from beneath his coat on two prior robberies. Tonight the police are watching as a suspicious man walks back and forth on the sidewalk. They engage him and find he is carrying a concealed handgun in his waistband, but with the passage of HB 228 that's no longer an arrestable offense until he actually commits another robbery or other crime using the weapon. He walks away, confident that he will find another time to strike when the cops aren't out and about. Concealed weapons laws may not discourage illegal carry for the active criminal, but HB 228 goes to justify carrying at all times since it does away with any penalty unless getting caught committing another offense. If you're planning to commit a forcible felony, do you really care whether they tack on some insignificant misdemeanor charge for having a concealed weapon? Under HB 228 even a convicted felon in possession of a concealed weapon doesn't become a felony offense unless used in a crime.

So if you're still tracking with me, let's talk about cops walking up on cars with their guns drawn for "harmless defensive purposes", in my Department that is justified by only some unusual circumstances and specifically requires an officer to document that as a use of force in a full report and justify his actions. Where in HB 228 do you see any require for a citizen to justify his or her actions in a similar fashion? In my community, there would be outrage if the police walk up to every traffic violator or panhandler with their pistol drawn and held at their side, ever so careful to avoid the barrel pointing directly at someone. Would your community not feel the same ire?

There are many other aspects of HB 228 which confound the senses of everyday citizens, law enforcement officers and practitioners in the justice system. You'll have heard many of them in testimony today. I urge you to analyze carefully the risk we place people in, giving criminals the same RIGHT TO CARRY that our law abiding voters can readily do with a concealed carry permit. Don't be fooled by the idea that criminals will be afraid of the public because victims can carry – they have the opportunity to do that now and seldom is it practiced. All we do with HB228 is open the floodgates for everyone regardless of intent to carry weapons and this will give rise to conflicts, probably deadly.

Proponents of this bill have managed to strike fear in the hearts of many of your fellow legislators, afraid that other valuable legislation will be sacrificed or votes will be lost due to the powerful lobbying of the NRA. Interestingly the NRA has supported Castle Doctrine Bills in many other states, but here they have joined with a group who are pushing reason off the edge of a cliff. I fear not what the benefit of HB228 will be, but at what cost will we indulge this powerful lobby? Join your citizen majority and vote to kill HB 228, send the message to the NRA that you will not be pressured to give up reason and will stand in the way of their drive to the cliff. Vote DO NOT PASS today, before you or someone you love pays the ultimate price for playing into the hands of criminals just to please some gun activists. I'll be there to support you for doing the right thing and if you are still unsure what the right thing is, go out and get a concealed weapons permit!

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Muir".

Mark Muir, Chief of Police  
Missoula, MT